Remarks

Introduction

The above-identified application has been carefully reviewed in light of the Office Action mailed January 15, 2004, which included a final rejection of the claims, and the Advisory Action mailed April 16, 2004.

Applicant does not concede with the remarks or rejections previously maintained or stated by the Examiner, and applicant maintains its previous position regarding the patentability of the claims. However, to advance the prosecution of the subject application, applicant has amended claim 1, 17, and 26, as set forth above. Support for the amendments to the claims can be found in the application as originally filed, for example, Example 1 at page 11. Care has been taken to avoid adding new matter.

As a preliminary matter, applicant notes that the Examiner has again rejected claims 1-9 and 17-26 under 35 U.S.C. § 112, second paragraph despite the withdrawal of the rejection in the January 15, 2004 Office Action and applicant's showing that such claims are definite as determined by the Board of Patent Appeals and Interferences.

Status of Claims

Claims 1-9, 17-26, and 28-29 are currently pending.

Rejections Under 35 U.S.C. § 112, second paragraph

Claims 1-9 and 17-26 have been rejected under 35 U.S.C. § 112, second paragraph regarding the use of the phrase "to control a duration of therapeutic activity".

As discussed previously, and as acknowledged in the Office Action mailed January 15, 2004, such a phrase is not indefinite. Nevertheless, applicant submits that the amendments to claims 1, 17, and 26, and the claims dependent therefrom, have removed the language objected to by the Examiner.

In view of the above, applicant submits the rejection is moot in view of the amendments to the claims.

Rejections Under 35 U.S.C. § 103

Claims 1, 6, 17, 22, and 26-27 remain rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Ludlow et al. in view of Schantz et al.; Ludlow et al. in view of Tsui et al.; and Ludlow et al. and Shantz et al. in view of Sugiyama. Claims 1-9 and 17-29 remain rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Ludlow et al. and Shantz et al. in view of Sugiyama.

As indicated above, applicant does not concede to the rejections or the remarks made by the Examiner, but to advance the prosecution of the subject application, the claims have been amended as set forth above.

Applicant respectfully traverses the rejections as they apply to the present claims.

Based on the Examiner's remarks regarding the prior art, it is understood that the Examiner believes the effect, extent, or type of muscle paralysis that can be obtained upon administration to the muscle of a given amount (e.g., 200 units) of a first botulinum toxin type (e.g., type A) is the same as the effect, extent, or type of muscle paralysis that can be obtained upon administration to the muscle of half the given amount (e.g., 100 units) of the first botulinum toxin (e.g.,

type A) and half the given amount (e.g., 100 units) of a second botulinum toxin (e.g., type B).

It appears that the Examiner is stating that since the art teaches the use of various botulinum toxin serotypes alone, there is no reason not to combine them, and the art combinations made are therefore alleged to make obvious combinations as recited in the present claims.

In view of the understanding and analogy above, applicant submits that the references alone or in combination do not disclose, teach, or even suggest that a given amount of the first botulinum toxin (e.g., 100 units of botulinum toxin type A) and a given amount of the second botulinum toxin (e.g., 100 units of botulinum toxin type B) would give a result any different from just administering the sum of the two given amounts (e.g., 200 units) of either the first or second botulinum toxin (e.g., either botulinum toxin type A or botulinum toxin type B).

The methods and compositions recited in the present claims recite that the administration of a combination of botulinum toxins is effective in enhancing relief of muscle contraction relative to the relief provided by a reference composition including an amount of only one of the selected neurotoxins equal to the total amount of the neurotoxins of the combination. The enhancement obtained with the combination of neurotoxins is an advantage that is not disclosed, taught, or suggested by the prior art.

In view of the above, applicant submits that the present claims 1-9 and 17-26 and 28-29 are unobvious from and patentable over Ludlow et al., Shantz et al., Tsui et al., and Sugiyama et al., alone or in any combination, under 35 U.S.C. 103(a).

Each of the present dependent claims is separately patentable over the prior art. For example, none of the prior art disclose, teach, or even suggest the present methods and compositions including the additional feature or features recited in any of the present dependent claims, such as the specific combinations of neurotoxins. Therefore, applicant submits that each of the present claims is separately patentable over the prior art.

In conclusion, applicant has shown that the present claims satisfy the requirements of 35 U.S.C. § 112, and are unobvious from and patentable over the prior art under 35 U.S.C. § 103. Therefore, applicant submits that the present claims, that is claims 1-9, 17-26, and 28-29 are allowable. Therefore, applicant requests the Examiner to pass the above-identified application to issuance at an early date. Should any matters remain unresolved, the Examiner is requested to call (collect) applicant's attorney at the telephone number given below.

Respectfully submitted,

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Frank J. Uxa
Attorney for Applicant
Registration No. 25,612
4 Venture, Suite 300
Irvine, California 92618
(949) 450-1750
(949) 450-1764 Facsimile